

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

NATIONAL CARPENTRY
CONTRACTORS

Employer

and

UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA,
A/W NEW ENGLAND REGIONAL
COUNCIL OF CARPENTERS

Petitioner

Case 1-RC-22133

DECISION AND ORDER¹

The Union, United Brotherhood of Carpenters & Joiners of America, a/w New England Regional Council of Carpenters, seeks to represent a unit of about twenty "full-time and regular part-time carpenters" whom it claims were employed by National Carpentry Contractors (NCC or the Employer) at two construction projects located in Woburn and Lexington, Massachusetts (Avalon Woburn and Avalon Lexington,

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; and 3) the labor organization involved claims to represent certain employees of the Employer.

respectively). The Employer contends that the petition should be dismissed on two grounds. First, the Employer asserts that its work at the two jobsites involved in this petition has ended and that it is no longer performing any construction work at these locations or, for that matter, at any location in Massachusetts. Second, the Employer asserts that it never employed any employees at the two jobsites. Rather the Employer asserts that it only employed superintendents who managed the work of subcontractors, and that it was these subcontractors who employed the carpenters who worked at the Avalon Woburn and Avalon Lexington jobsites. Accordingly, the Employer contends that the petition should be dismissed because it is no longer performing any construction work in Massachusetts and because it never employed the carpenters whom the Union seeks to represent.

I find, as discussed more fully below, that it would be inappropriate to direct an election in the petitioned-for unit because the Employer has completed its work on the Avalon Woburn and Avalon Lexington construction projects and is not presently performing any work in Massachusetts. Therefore, I do not reach the issue of whether the Employer employed the petitioned-for unit of carpenters, and I shall dismiss the petition.²

² I have nevertheless set forth evidence concerning the structure of the Employer's business and the Employer's work at Avalon Woburn and Avalon Lexington. The evidence as to the employer or employers of these employees was inconclusive, but I have made findings, in the event that the Employer does business in Massachusetts again in the future.

I. FACTS

A. Background and Overview of NCC's Business

The Employer is a Stamford, Connecticut-based sole-proprietorship owned by John Kirk that operates as a commercial carpentry general contractor providing construction management services.³ As noted above, the Employer employs superintendents, and the Union stipulated that it does not seek to represent these individuals.⁴ The Employer is hired by large apartment complex builders, including Avalon Bay Communities, Inc. (Avalon).⁵ NCC, in turn, subcontracts with metal stud companies, window and door companies, masonry companies, vinyl and wood siding companies, and aluminum trim and façade companies, to perform the work needed on Avalon's projects. NCC's superintendents serve as carpentry construction managers on these projects, overseeing the work of its subcontractors.

NCC's subcontractors decide whom to hire and are solely responsible for establishing the wages and benefits these individuals receive. NCC never directly pays any individuals whom these subcontractors employ.

B. The Avalon Woburn and Avalon Lexington Projects

The Employer began working on Avalon Woburn in about December 2005, and completed the project sometime between May and July 2007. Although it is unclear

³ The Employer also has an office in Sevierville, Tennessee, which handles its accounting and record-keeping.

⁴ Kirk identified NCC's superintendents at Avalon Woburn and Avalon Lexington as Edwin Narvaez, Guillermo Endo, Marcello Mena, and Juan Campos.

⁵ Although Kirk identified other large builders that contract for NCC's services, my discussion of NCC's business will be limited to Avalon, because the instant petition only concerns NCC's work on the Avalon Woburn and Avalon Lexington projects.

when the Employer began working on Avalon Lexington, it ceased performing work on that project shortly after the July 23 and 30, 2007 hearing in this proceeding. NCC has not performed any work in Massachusetts since.

At Avalon Woburn, NCC prepared preliminary estimates and ensured that all building materials met Avalon's specifications. NCC and Avalon executed a written contract for Avalon Woburn that set forth, *inter alia*, the schedule, scope of work, insurance requirements, and delivery, storage, handling, and installation conditions.⁶ At Avalon Lexington, NCC prepared preliminary lumber estimates, performed a structural engineering review, and hired lumber, panel, and truss companies. NCC then hired numerous subcontractors for the work specified in connection with the Avalon Woburn and Avalon Lexington projects.⁷

Two employees testified at the hearing. Employees Victor Guzman and Juan Carlos Soto both worked at Avalon Woburn and Avalon Lexington. Juan Caballero, who owns Caballero Construction, and NCC superintendent Edwin Narvaez, who also owns Right Angle Construction, hired Guzman in November 2006 to work at Avalon Woburn.⁸

⁶ According to Kirk, NCC executed a similar contract with Avalon for Avalon Lexington, although that contract was not placed in the record.

⁷ These subcontractors included Right Angle Construction Co. (whose owner is NCC superintendent Edwin Narvaez), Adrian Window & Door, Alveno Construction, Caballero Construction, Family Construction, Jose Framing, Chaparro Construction, Marco Lifts, Nelson Gonzales Construction, Campos Brothers Construction, Legua Drywall, Stephen Poulin Company, and Flavio Stairs. The hearing in this case was adjourned on July 30, 2007, and the Region subsequently issued subpoenas to all of the above-named subcontractors. However, all the subpoenas were returned as undeliverable, and on October 19, 2007, the Region issued an Order Closing Hearing and Setting Briefing Due Date.

⁸ Caballero supposedly hired Guzman after asking Narvaez's permission to do so. A July 6, 2007 letter from Caballero Construction to NCC lists Guzman as one of its employees from August 2006 to April 2007 at Avalon Woburn. A July 7, 2007 letter from Alveno Construction to NCC lists Guzman as an employee then on its payroll since March 2007; Guzman, however, denied working for Alveno Construction.

Guzman worked at Avalon Woburn from December 2006 until May 2007, and, thereafter, worked at Avalon Lexington until approximately late June 2007, when he quit. Guzman neither completed nor received any employment-related documents in connection with his tenure at either Avalon Woburn or Avalon Lexington. Narvaez set Guzman's wage rate, and he was paid in cash, either by Caballero, Narvaez, or Edwin Narvaez, Jr.⁹ Guzman and other workers were sometimes paid at the jobsite and sometimes at an apartment in Lawrence, Massachusetts, that Guzman identified at Narvaez's.

Prior to March 2007, Caballero or Narvaez directed Guzman's work at Avalon Woburn. After March 2007, Narvaez, Jr. or NCC superintendent Juan Campos directed Guzman's work there. Guzman used tools provided to him at the jobsite, but he did not know who owned them. While working at Avalon Lexington, Narvaez directed his work.

Juan Carlos Soto worked at Avalon Woburn from approximately September 2006 to April 2007, and at Avalon Lexington for about a month after that. Narvaez hired Soto in person in Connecticut, set his initial wage rate, and drove him from Connecticut to the Avalon Woburn site for his first day of work there. Soto neither completed nor received any employment-related documents in connection with his tenure at either Avalon Woburn or Avalon Lexington. Soto originally worked picking up trash, and then worked putting in floors, fixing walls, and occasionally putting in windows for various "contractors" at Avalon Woburn that Narvaez indicated he would be helping. Narvaez or

⁹ It is unclear what, if any, relationship Edwin Narvaez, Jr. has to NCC, Right Angle, or any other subcontractor that worked at Avalon Woburn or Avalon Lexington.

these "contractors" paid Soto in cash.¹⁰ Narvaez provided Soto with tools when he worked at the Avalon Woburn project.

While at Avalon Lexington, Soto worked under Narvaez's direction and Narvaez paid him and five or six others in cash at Narvaez's apartment. A floor truss contractor Soto could not identify raised Soto's pay to \$10 an hour, but Soto quit because he was not being paid.¹¹

II. ANALYSIS AND CONCLUSION

In situations involving the imminent completion of a construction project or an imminent plant closure, the Board has found that conducting an election in the unit sought serves no useful purpose, where there is no evidence that the employer will have any work for the petitioned-for employees in the future.¹² Applying the foregoing precedent, I find that it would be inappropriate to direct an election in the petitioned-for unit here because the Employer has completed its work at both Avalon Woburn and Avalon Lexington, and is not presently performing any work in Massachusetts. In these circumstances, I do not reach the issue of whether the Employer employed the petitioned-for unit of carpenters who worked at these projects, and I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

¹⁰ Among the three "contractors" Soto referred to, he could only identify Caballero, for whom he worked the most, by name.

¹¹ Soto claimed he is owed a total of \$850, \$200 from Caballero and the balance from Narvaez, for work he performed at Avalon Lexington.

¹² See *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *M.B. Kahn Construction Co., Inc.*, 210 NLRB 1050, 1050 (1974); and *Martin Marietta Aluminum Inc.*, 214 NLRB 646, 647 (1974). See also *Fraser-Brace Engineering Co.*, 38 NLRB 1263, 1264-1265 (1942) (dismissing petition without prejudice where construction work on a project was nearing completion and all or most employees would soon be laid off).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision, clarification of Bargaining Unit, and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 25, 2008.

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
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Dated at Boston, Massachusetts
This 11th day of January, 2008.

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